

IN THE SUPREME COURT OF TENNESSEE  
SPECIAL WORKERS' COMPENSATION APPEALS PANEL  
AT JACKSON

**FILED**

October 26, 1998

Cecil Crowson, Jr.  
Appellate Court Clerk

WILLIAM McDOWELL, )  
 )  
Plaintiff/Appellee, )  
 )  
v. )  
 )  
HENRY I. SIEGEL COMPANY, INC. )  
and ROYAL INSURANCE COMPANY, )  
 )  
Defendants/Appellants. )

Carroll Circuit

No. 02S01-9710-CV-00088

Honorable C. Creed McGinley, Judge

**For the Appellants:**

Stephen R. Butler  
Jackson, Shields, Yeiser & Cantrell  
262 German Oak Drive  
Cordova, TN 38018

**For the Appellee:**

Kenneth L. Walker  
Walker Law Office  
P. O. Box 530  
Lexington, TN 38351

**MEMORANDUM OPINION**

**Members of Panel:**

Senior Judge John K. Byers  
Special Judge F. Lloyd Tatum  
Special Judge Paul R. Summers

**AFFIRMED**

**TATUM, Special Judge**

## OPINION

This workers' compensation appeal has been referred to the Special Workers' Compensation Appeals Panel of the Supreme Court in accordance with Tenn. Code Ann. § 50-6-225(e)(3) for hearing and reporting to the Supreme Court of findings of fact and conclusions of law.

The trial judge found that the plaintiff had sustained thirty percent permanent partial disability to each arm and entered judgment accordingly.

The defendant employer, Henry I. Siegel Company, Inc. (HIS), and its insurance carrier, Royal Insurance Company, present issue that the thirty percent permanent partial disability to each arm is excessive and should be reduced to approximately ten percent permanent disability to each arm.

It was stipulated before trial that the plaintiff had a gradually occurring injury in both arms. The only question that was presented to the trial court was the extent of the disability.

The plaintiff testified that he is a high school graduate. He was 47 years of age at the time of his injury. He has worked for the defendant since May, 1967 and continues to work for the defendant as a "packer."

The plaintiff testified that in October, 1994 his hands and wrists began hurting. His right hand and wrist hurt more than the left. His hands and wrists continued to hurt, but he continued to work until he had surgery on the right hand on January 9, 1995.

After surgery to his right hand, his left hand and arm became much worse. Ultimately he had surgery on the left hand and arm on February 8, 1995. After the surgery on his left hand, both hands continued to pain but the left hand was much worse than the right hand. He went to see Dr. Eugene F. Gulish who performed a second surgery on the left hand on March 12, 1996.

Plaintiff testified that after the repeat surgery on the left hand, it improved. However, he continued to have wrist pain and tingling running down three fingers. It was not as bad at the time of trial as before the second surgery, but at times he could not pick up a cup of coffee, open cans of Coke, or open jars. He does not have the grip strength he once had in the left hand.

He further testified that he had occasional pain in his right hand, but nothing compared to the pain in the left hand with much less tingling. The right hand is weak, but much stronger than the left hand. He is right-handed.

Plaintiff testified that he continued to work, but he was paid on the basis of his production. His average earnings were \$14.85 per hour before his difficulty with his hands. He now earns approximately \$10-12.00 an hour. He testified that a back injury he incurred after the hand surgery has also hindered his ability to work and inhibited his earning capacity.

He further testified that he had back surgery in 1995 and 1996. In 1995, he had acute gastroenteritis, chronic obstructive pulmonary disease, pneumonia, and back pain. In 1996, he suffered back pain, carotidynia, upper respiratory infection, bronchitis, lumbar disc disease, and prostatitis. In 1996, he continued to suffer with pneumonia, emphysema, and hypokalemia, and a herniated disc of the low back for which he had surgery. In 1996, he also had dermatitis, anemia, and migraine headaches.

Since the plaintiff has worked for HIS, he has been a packer. This requires the constant use of his hands and wrists in packing pants and shirts in boxes.

Mr. Rusty Lifsey testified that at the time of trial on September 5, 1997, he had been the plaintiff's packing supervisor for five or six years. He could discern no change in the plaintiff's ability to work from the time he first became plaintiff's supervisor until the time of trial. He testified that he talks to plaintiff two or three times each day and that plaintiff never complains of wrist pain.

In March, due to the employment of computers, there was a twenty percent reduction in warehouse production. This resulted in employees at the plant receiving a twenty percent loss of pay, assuming their production remained the same.

Mr. Lifsey placed the plaintiff on different jobs because of his hands. For example, he asked plaintiff on one occasion if he could put hangers on pants, and the plaintiff responded in the affirmative. However, the witness did not think that he was able to do this work because of his wrists, and did not place him on that job.

By stipulation, medical records of several doctors, hospitals, and other medical personnel were introduced into evidence. The testimony of Dr. Joseph C. Boals was

admitted by deposition.

After being seen by other doctors, the plaintiff ultimately was examined on November 23, 1994 by Dr. Glenn Barnett, a neurosurgeon. Testing revealed carpal tunnel syndrome at least on the right side.

On January 4, 1995, Dr. Barnett again saw plaintiff. His symptoms had not subsided, but the right hand bothered him more than the left. On January 9, 1995, an open release of the right carpal ligament was performed by Dr. Barnett.

On February 6, 1995, plaintiff told Dr. Barnett that he was totally satisfied with the right hand, but the left hand was "killing" him. The decision was made for surgery on the left hand and this was performed on February 8, 1995.

On February 20, 1995, before the plaintiff was discharged, Dr. Barnett opined that the plaintiff had five percent impairment to each arm.

On April 5, 1995, he reported to Dr. Barnett that his right hand felt "pretty good," but the left hand hurt nearly constantly. On April 26, 1995, plaintiff told Dr. Barnett that his right hand was "great," but his left hand was "driving him wild." On this occasion, Dr. Barnett advised plaintiff that he could do nothing else for him and discharged him.

On May 25, 1995, the plaintiff was seen by Dr. Lowell F. Stonecipher with no symptoms on the right hand, but pain on the left. Dr. Stonecipher recommended repeat open carpal tunnel surgery with neurolysis to break up any intraneural scarring.

The plaintiff was ultimately seen by Dr. Eugene F. Gulish, an orthopedic surgeon, on January 15, 1996 by direction of the Court. Dr. Gulish examined both of plaintiff's hands. Examination of the right wrist indicated a full range of motion, no pain, good muscle strength, good grip strength, and negative Phalen's and Tinel's tests.

Examination and testing by Dr. Gulish of the left wrist indicated the need for surgery which was performed on March 12, 1996. Massive scar tissues were removed from the left wrist and hand.

On July 10, 1996, Dr. Gulish opined that plaintiff had three percent permanent impairment to the left arm. He predicted that plaintiff would have intermittent discomfort but could pursue a full course of activity with no neurologic change. He rendered no opinion with regard to the right arm.

The deposition of Dr. Joseph C. Boals, an orthopedic surgeon, was introduced into evidence. Dr. Boals saw the plaintiff one time, on August 20, 1996, for an independent medical evaluation. He rated the plaintiff as having ten percent permanent impairment to each upper extremity.

The rating was based on loss of grip strength. The loss of grip strength was computed by taking the grip strength of an average person and subtracting from it the plaintiff's own grip strength.

Dr. Boals testified that he did not use the tables in the American Medical Association (AMA) Guidelines to determine the average grip strength, but used a table supplied by the Jamar Company, which manufactured the dynamometer that he used. He testified that the strengths given by the AMA tables were too low and that if he used the tables in the AMA Guidelines his rating on the right side would be zero disability. However, even with the tables in the AMA Guidelines, the plaintiff would continue to be depressed in the left arm.

Our review is de novo upon the record of the trial court, accompanied by a presumption of correctness of the findings of fact, unless the preponderance of the evidence is otherwise. Tenn. Code Ann. § 50-6-225(e). This tribunal is required to conduct an independent examination of the record to determine where the preponderance of the evidence lies. See Landers v. Fireman's Fund Ins. Co., 775 S.W.2d 355 (Tenn. 1989). Where the trial judge has seen and heard the witnesses, especially if issues of credibility and weight to be given oral testimony are involved, considerable deference must be given those circumstances on review. Townsend v. State, 826 S.W.2d 434, 437 (Tenn. 1992). Where medical testimony is documentary or by deposition, the reviewing tribunal is as able to pass on the weight and value of the evidence as the trial judge. Humphrey v. David Witherspoon, Inc., 734 S.W.2d 315, 316 (Tenn. 1987).

As stated, all of the medical evidence is by deposition or by documentation. None of the medical experts testified. Plaintiff and Mr. Lifsey testified in Court.

Taking the evidence as a whole, we cannot say that it preponderates against the findings of the trial judge. His judgment must therefore be affirmed.

We do not find that this appeal is frivolous, or taken for purposes of delay. Plaintiff's request for assessment of sanctions is denied. Costs are taxed against

defendants/appellants.

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F. LLOYD TATUM, SPECIAL JUDGE

CONCUR:

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JOHN K. BYERS, SENIOR JUDGE

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PAUL R. SUMMERS, SPECIAL JUDGE

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AT JACKSON

WILLIAM MCDOWELL,

Plaintiff/Appellee,

vs.

HENRY I. SIEGEL COMPANY, INC.,  
and ROYAL INSURANCE COMPANY,

Defendants/Appellants.

) CARROLL CIRCUIT  
) NO. 3209  
)  
) Hon. C. Creed McGinley,  
) Judge  
)  
) NO. 02S01-9710-CV-00088  
)  
)  
) AFFIRMED.

**FILED**  
**October 26, 1998**  
**Cecil Crowson, Jr.**  
Appellate Court Clerk

JUDGMENT ORDER

This case is before the Court upon the entire record, including the order of referral to the Special Workers' Compensation Appeals Panel, and the Panel's Memorandum Opinion setting forth its findings of fact and conclusions of law, which are incorporated herein by reference.

Whereupon, it appears to the Court that the Memorandum Opinion of the Panel should be accepted and approved; and

It is, therefore, ordered that the Panel's findings of fact and conclusions of law are adopted and affirmed, and the decision of the Panel is made the judgment of the Court.

Costs will be paid by Appellants and surety, for which execution may issue if necessary.

IT IS SO ORDERED this 26th day of October, 1998.

PER CURIAM

